

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:20-mj-00070

MICHAEL LEROSE

UNITED STATES EMERGENCY MOTION TO STAY

Comes now the United States of America, by L. Alexander Hamner, Assistant United States Attorney for the Southern District of West Virginia, and moves this Court to stay the Order of Release entered by a United States Magistrate Judge in the Southern District of West Virginia on June 16, 2020 pending an appeal pursuant to 18 U.S.C. § 3145 (a).

On June 9, 2020, Michael LeRose ("defendant") was arrested on a warrant from a complaint in the Southern District of West Virginia, charging him with a violating 18 U.S.C. § 922(g)(4). ECF 1.

A Motion for Detention Hearing was filed that same day. ECF 3. The United States moved for pretrial detention on the basis of danger to the community, pursuant to 18 U.S.C. §§ 3142(e), (f)(1)(A), (E), and (f)(2)(A).

Defendant waived his right to a preliminary hearing, and a detention hearing was held in the Southern District of West Virginia on June 16, 2020. Subsequent to the conclusion of the detention

hearing, the Magistrate Judge denied the United States motion for pretrial detention. ECF 16.

Title 18 U.S.C. § 3145 governs the review and appeal of detention orders. This statute provides, in pertinent part, as follows:

(a) Review of a release Order.--If a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court--

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) The person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

18 U.S.C. § 3145(a).

The United States Attorney's Office in the Southern District of West Virginia intends to promptly file a motion for revocation of the order or amendment of the conditions of release and a memorandum in support of the motion pursuant to 18 U.S.C. § 3145(a) with this Court which has original jurisdiction of this case. See United States v. Cisneros, 328 F.3d 610, 615 (10th Cir. 2003) ("The

government filed its revocation motion in the United States District Court for the District of New Mexico, which is 'the court having original jurisdiction over the offense' because the District of New Mexico is the district in which the indictment charging Cisneros was returned and in which the prosecution is pending."); see also United States v. Evans, 62 F.3d 1233, 1239 (9th Cir. 1995) (stating in a case involving review under § 3145 of magistrate judge's detention order that "[o]nly that district court [i.e., the district court with original jurisdiction over the offense] has the authority to review the magistrate judge's order").

WHEREFORE, the United States respectfully requests this Court to stay the Order of Release entered by a United States Magistrate Judge in the Southern District of West Virginia on June 16, 2020 pending an appeal pursuant to 18 U.S.C. § 3145(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing "UNITED STATES EMERGENCY MOTION TO STAY" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing this 16th day of June 2020, as follows:

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